IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 5066 of 2003()

CC.157/2002 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI
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PETITIONER: ACCUSED

ABDUL RAZAK @ KUNHU,
S/O. HYDROS, VALIYAKATHU HOUSE,
MULLANPARA, MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE & DEFACTO COMPLAINANT
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1. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOZHI-31.

2. P.RUGMINI, 'MITHILA', KARUVAMBRAM,
MELAKKAM, MANJERI, MALAPPURAM DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.TONY MATHEW

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.C.5066/2003

ORDER ON CRL.M.A.11437/2003 IN CRL.M.C.5066/2003

DISMISSED.

26.7.2007 **J.B.KOSHY,JUDGE**

J.B.KOSHY, J.

CRL.M.C.NO.5066 OF 2003 (C)

Dated this the 26th day of July, 2007

O R D E R

This application is filed to quash the charge against the petitioner in C.C.No.157/2002 on the file of the Chief Judicial Magistrate, Manjeri. On the basis of a private complaint, police registered a crime as Crime No.455/2002. In the complaint, it was alleged that with the intention of cheating the complainant, Rs.1,00,000/- was obtained and an agreement was signed for selling the property. Not only the amount was not paid but the above property was sold to some other person. On that basis, petitioner was charged for the offences punishable under Section 420 of the Indian Penal Code. It is settled law that this Court will quash the charge only in exceptional circumstances. If the allegations raised will not satisfy the ingredients of offences charged, there is no point in continuing the case. It is also not disputed that certain acts may give rise to criminal as well as civil action.

The learned counsel submitted the decisions of the Supreme Court in ***Anil Mahajan v. Bhar Industries Ltd. and another ((2005) 10 S.C.C. 228)*** and ***Hari Prasad Chamaria v. Bishun Kumar Surekha and others (AIR 1974 S.C. 301)*** to show that if there is no allegation of cheating on the date of action, only civil case will lie and criminal case will not lie. In otherwise, fraudulent and dishonest intention must be shown to be existing from the very beginning of the contract. Mere breach of contract subsequently only attract civil action. In this case, there is a specific allegation in the complaint regarding fraudulent and dishonest intention from the very beginning. It stated as follows:

So, in this case, there is allegation that at the time of signing the agreement and receiving the money itself, there was intention to cheat the complainant. Whether allegations are correct or not is a matter of evidence. Since there are allegations to that effect, it cannot be stated that even if the allegations are true and proved, petitioner will be acquitted. In the above circumstances, I am not inclined to quash the charge proceedings in cognizance by using the powers under Section 482 of the Cr.P.C. and it is for the petitioner to make the case before the trial court. Without expressing any opinion regarding the merits of the case, this Criminal M.C. is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY, J.

M.F.A.NO. OF 2006 ()

J U D G M E N T

2nd July, 2007